

Date of decision: 13.9.1995

FOR APPROVAL AND SIGNATURE:

Hon'ble Mr. Justice

R.K.Abichandani

1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter of not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. M.I. Hava, Advocate for the petitioner

Miss Harsha Devani, Assistant Government Pleader for the respondent.

Coram:R.K.Abichandani,J.

Date :13.9.1995

ORAL JUDGEMENT:

The petitioner challenges the order of the Urban Land Tribunal dated 29th August, 1989 dismissing the appeal of the petitioner and confirming the order of the competent authority dated 30th December, 1988 by which an area of 15676.08 sq.mtrs was declared to be excess vacant land.

At the outset the learned Counsel for the petitioner submitted that the petitioner does not press for any claim in respect of survey No. 44 admeasuring 13 acres and 13 gunthas

(56,150 sq.mtrs.) and accepts the findings of the competent authority and the appellate authority in respect of that land.

As regards the lands of survey No. 104/3 admeasuring 1 acre and 36 gunthas (6,677 sq.mtrs.) it was submitted that admittedly the said land was in the agricultural zone on 17.2.1976 and only on 11th August, 1988 the circular was issued by the Government as per which the said land was included in residential zone. It was submitted that Dilipbhai who was born on 1.1.1963 though a minor on 17.2.1976, had become major on the date on which the land of survey No. 104/3 became vacant land by its inclusion in the residential zone from July, 1987. Therefore, the holding in respect of that land ought to have been computed as on the date on which it became vacant land in view of Explanation (ii) to Section 6(1) of the said Act. It is clear that the competent authority has over-looked this aspect and instead of computing the holding in respect of survey No. 104/3 as on the date on which it became vacant land, it was treated as if it was a vacant land as on 17.2.1976. This position emerges from a decision of this Court in Special Civil Application No. 933/1984 decided on 31.7.1995, on which reliance was placed on behalf of the petitioner. The matter will therefore have to be remanded to the competent authority for a fresh consideration in respect of survey No. 104/3 in light of the provisions of Section 6(1), Explanation (ii) of the said Act and the above judgement.

It was also submitted that the built-up property bearing house No. 1/124 and 1/121 could not have been included as vacant land in the holding of the petitioner. Reliance was placed on the decision in Meera Gupta's case - AIR 1992 S.C. 1567. Since the matter is being remanded for considering the land holding in respect of survey No.104/3, it will be appropriate that the petitioner may lead evidence in support of his contention that house No. 1/124 and 1/121 were built before the date of commencement of the Act and that they could not be treated as vacant land. The impugned orders are therefore, set aside to the above limited extent and the matter is remanded to the competent authority for disposal in accordance with law on the aforesaid two aspects. Rule is made absolute accordingly with no order as to costs.

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